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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re AIRICA G., a Person Coming Under the Juvenile Court Law.	B153014 (Super. Ct. No. J982880)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LISA G., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Leslie Flynn, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel, and Sterling Honea, Deputy County Counsel, for Plaintiff and Respondent.

Lisa G. (appellant) is the mother of Airica G. (born March 1996). She appeals the orders of the juvenile court denying her Welfare and Institutions Code section 388 petition[1] and terminating her parental rights as to Airica following a section 366.26 hearing. We affirm the orders of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant is the mother of Airica, Ashley G. (born February 1988) and Shayna B. (born July 1985). Ashley and Shayna's father was Odell B. Airica's father's identity and whereabouts were unknown. The three girls were first taken into custody on April 5, 1998, when appellant left them home alone. The petition filed by the Department of Children and Family Services (the Department) alleged that appellant left them overnight and the minors were found burning papers. The court sustained the petition on July 30, 1998, and found the minors to be dependents of the court pursuant to section 300, subdivisions (b) and (g). The children were placed in foster care and appellant was granted monitored visitation and reunification services. By March 1999, appellant was in compliance with the case plan and visiting the children on an unmonitored basis. As a result, on March 25, 1999, the court released the children to appellant's care and custody for 60 days. During that period, the social worker visited appellant's home and found the children were happy and the home was clean and safe. At a hearing on May 20, 1999, the court placed the children with their mother and ordered family maintenance services.

Two months later, the Department filed a section 342 petition, which alleged that appellant was using drugs and that appellant had refused to meet with the social worker. The court found substantial danger existed to the physical and

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[1] All further statutory references shall be to the Welfare and Institutions Code unless otherwise indicated.

emotional health of the children if they were not removed from appellant's custody and the children were placed with Linda B., a former foster care provider. Appellant was granted monitored visitation and the matter was set for mediation on October 6, 1999. Appellant failed to appear for mediation and the court found true the allegations that appellant had physically abused the children and had hit Airica with a belt and a stick, that appellant had left the children home for extended periods of time without making plans for their care, that she frequently used drugs, that she had slapped Ashley's face when she refused to shop-lift items, and that her male companion had threatened Ashley with a gun and attempted to throw her out of a moving car.

In a report dated November 18, 1999, the Department recommended adoption for all three children by Linda B. Appellant had only visited her children once during the preceding four months.

At the disposition hearing on December 8, 1999, the court declared the children dependents of the court under section 300, subdivisions (a), (b) and (j). The court terminated the existing "home of parent" order and ordered the children suitably placed. It ordered appellant to participate in drug counseling, individual counseling for domestic violence, and to complete a parenting plan. The matter was set for a section 366.22 hearing in February 2000.

At the section 366.22 hearing, appellant was present in the courthouse, but left before the hearing because she was pregnant and experiencing labor pains. The hearing was continued until March 9, 2000, and appellant failed to appear on that date as well. The court proceeded in her absence and terminated reunification services and set a section 366.26 permanency planning hearing. The section 366.26 hearing was continued to July 6, 2000. On that date, the court was informed that appellant was incarcerated in county jail and had not been brought to court. The hearing was continued numerous times thereafter, primarily due to notice problems. The final continuance was to September 6, 2001.

Prior to that date, on August 31, 2001, appellant filed a section 388 petition seeking to have Ashley and Airica returned to her care.[2] She alleged that she had visited consistently, had completed parenting and domestic violence classes, was employed and had established suitable housing and daycare.

The hearing on the section 388 petition was held on the same date as the section 366.26 hearing, on September 6, 2001. The court denied the petition, stating, "I did not feel that it stated a change of circumstances sufficient to go forward, and also I did not see that it would be in the best interest of the children." Thereafter, it proceeded with the section 366.26 hearing. The social worker testified that appellant had seen Airica only twice in the last year and had not had much contact with her. The Department reported that Linda B. was enthusiastic about adopting Airica and recommended that parental rights be terminated.

Appellant testified that her recent enrollment in a drug program prevented her from visiting her children often. She said she visited as often as she could and that she had a close relationship with Airica.

Airica, who was then five years old, testified in chambers. She said that appellant is her "real mom" but that Linda B. was now her mom. She also said she did not like it when appellant visited and did not want appellant to visit her in the future. She indicated she would be happy if appellant was not her mom anymore.

The court found there was no evidence of a parental relationship between appellant and Airica. It found credible Airica's testimony that she considered Linda B. to be her mother. It found clear and convincing evidence that Airica was adoptable and likely to be adopted and terminated parental rights.

On September 13, 2001, appellant appealed the denial of her section 388 petition. On September 28, 2001, appellant appealed the order terminating her

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[2] Shayna had already been adopted by Linda B., with appellant's consent.

parental rights with respect to Airica. Appellant did not appeal the orders with respect to Ashley.

DISCUSSION

Airica contends on appeal that the juvenile court abused its discretion in denying the section 388 petition because it proceeded without conducting a hearing so that appellant could establish that Airica had bonded with appellant and it was in her best interests to spend time with appellant.

She also contends that the order terminating of parental rights was not supported by substantial evidence. She claims that the social worker did not have enough first-hand knowledge of Airica's relationship with appellant to give a reliable opinion.

1. *Denial of the Section 388 Petition*

A section 388 petition will be granted if the petitioner establishes by a preponderance of the evidence that: (1) new evidence or changed circumstances exist; and (2) the proposed change would promote the best interests of the child.

If the petitioner makes a prima facie showing of those elements, an evidentiary hearing shall be ordered. (*In re Angel B.* (2002) 97 Cal.App.4th 454; *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431-433; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) A court need not order a hearing unless the facts alleged, if supported by evidence, would sustain a favorable decision on the petition. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 806.)

We review the summary denial of a section 388 petition for abuse of discretion. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

The section 388 petition contained the following allegations: "Minors are bonded with Mother and have reported that they want to spend more time with Mother. Therefore, unmonitored visits progressing to home of mother is in the

best interests of the children. [¶] Mother has demonstrated her serious intention to reunify through compliance with her case plan. Mother has successfully completed her residential treatment program. Mother has also completed parenting and domestic violence classes. Additionally, Mother has completed a perinatal treatment program with her youngest son . . . who is currently placed with Mother. (See attached certificates). [¶] Mother has visited consistently since detention. [¶] Mother is employed and has established suitable housing. [¶] Mother has appropriate daycare by maternal grandmother." No other documentation other than the completion certificates for infant parenting classes was attached.

Appellant's petition did establish a change of circumstances; that she had obtained suitable housing and employment. She did not however, establish the second prong required, that is, a change was in Airica's best interests.

"It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child. [Citation.]" (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.)

Appellant has not shown any long term ability to remain sober. In the past when Airica was returned to her, appellant has relapsed in less than 60 days. Appellant made no statements in the petition regarding her substance abuse. Moreover, it had been only five months since appellant had been incarcerated in the county jail. There was also no substantial evidence that Airica preferred to live with appellant rather than her foster family. (*In re Angel B., supra*, 97 Cal.App.4th at p. 463.)

The court had before it the social worker's report of June 6, 2001, which stated that "Airica does not appear to have any emotional problems at this time. She clearly is attached to her foster mother who is very nurturing. The foster mother, Linda [B.] is dedicated to caring for Shayna and Airica permanently." It also stated, "Minor[s'] mother, . . . has not demonstrated any

ability to care for her children. Mother is currently in a rehabilitation center for treatment of drug abuse." "Minors[] Shayna and Airica cannot be reunified with their mother, . . . Their mother has failed to comply with court orders and case plan resulting in the need for a permanent plan for the care of her children. Adoption has been identified as the most permanent plan. . . . [¶] The home of Linda [B.], the current foster care parent has been identified as an appropriate adoptive home for Shayna and Airica."

The foster agency report dated August 17, 2001, indicated that Airica was enrolled in kindergarten and receiving speech therapy services. She was demonstrating age-appropriate social skills, communicated well other children and adults, is well-behave on outings and enjoys the company of a younger foster child who was also placed in the home. It was reported that on July 20, 2001, Airica and her siblings visited with their mother "*whom they have not seen for more than six months.*" (Italics added.)

"When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. [Citation.] That need often will dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child. [Citation.] Thus, one moving for a change of placement bears the burden of proof to show, by a preponderance of the evidence that there is new evidence or that there are changed circumstances that may mean a change of placement is in the best interest of the child. [Citations.]" (*In re Angel B., supra*, 97 Cal.App.4th at p. 464, citing *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

There was no evidence other than the conclusory allegations contained in the petition that appellant was immediately ready to take custody on a permanent basis or that a change in placement was in the best interests of Airica. We find no abuse of discretion in the juvenile court's summary denial of the section 388 petition. (*In re Zachary G., supra,* 77 Cal.App.4th at p. 806.)

2. *Termination of Parental Rights*

Appellant argues that the section 366.26, subdivision (c)(1)(a) exception to termination of parental rights applied because she had a strong bond with Airica. The social worker's recommendation was at complete odds with appellant's allegations. Airica herself did not voice a strong desire to be returned to her mother. The court found the social worker and Airica to be credible. It is not for us to reweigh the evidence and substitute our judgment for that of the juvenile court. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 812; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51-53.)

To justify application of subdivision (c)(1)(a), any relationship between appellant and Airica must be sufficiently significant that Airica would suffer detriment from its termination. (*In re Angel B., supra,* 97 Cal.App.4th at p. 468.) If appellant's rights were not terminated, Airica would be denied a permanent stable adoptive family with her own sibling, something that the Legislature has determined to be detrimental. (*In re Angel B., supra*, 97 Cal.App.4th at p. 468.) We find no error in the court's order terminating parental rights.

DISPOSITION

The court's order denying the section 388 petition and terminating parental rights are affirmed.

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HASTINGS, J.

We concur:

VOGEL (C.S.), P.J.

CURRY, J.